

James Johnson, Esq. - 09-09-04

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

OLIVIA Y, By and  
Through Her Next Friend,  
James D. Johnson, et al.

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:04CV25LN

HALEY BARBOUR, As Governor  
Of the State of Mississippi;  
DONALD TAYLOR, as Executive  
Director of the Department of  
Human Services; and BILLY MANGOLD,  
As Director of the Division of  
Children's Services

DEFENDANTS

DEPOSITION OF JAMES D. JOHNSON, ESQ.

Taken at the instance of the Defendant at the  
offices of Bradley Arant, LLP, One Jackson Place,  
188 E. Capitol Street, Suite 450, Jackson,  
Mississippi, on Thursday, September 9, 2004,  
beginning at approximately 8:09 a.m.

APPEARANCES:

ERIC E. THOMPSON, ESQ.  
SHIRIM NOTHENBERG, ESQ.  
Children's Rights, Inc.  
404 Park Avenue South  
New York, NY 10016

COPY

COUNSEL FOR PLAINTIFFS



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Reported By: Julie Brown, CSR #1587  
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1 JAMES D. JOHNSON, ESQ.,  
2 having been first duly sworn, was examined and  
3 testified as follows:  
4 EXAMINATION BY MS. MALLET:  
5 Q. This is the deposition of Mr. James D.  
6 Johnson in this matter, Olivia Y, et al. versus  
7 Haley Barbour, et al. The witness has been sworn.  
8 I'm Betty Mallett representing the defendants in  
9 this case. And I understand that, Mr. Johnson, that  
10 we have other lawyers here. We will allow them to  
11 identify themselves.  
12 MR. THOMPSON: For the record, Eric  
13 Thompson, Children's Rights for plaintiffs, attorney  
14 for the plaintiffs.  
15 MS. NOTHENBERG: Shirim Nothenberg for  
16 plaintiffs.  
17 Q. (By Ms. Mallett) Mr. Johnson, this  
18 deposition is taken pursuant to the Federal Rules of  
19 Civil Procedure. I'm sure you're aware of all of  
20 that. And I'm just going to have his notice of  
21 deposition marked as an exhibit.  
22 (Exhibit 6 marked for identification.)  
23 Q. Mr. Johnson, again, I'm Betty Mallett  
24 representing the defendants. Will you please give  
25 me your full name?

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1 A. James Dewitt, D-E-W-I-T-T, Johnson.  
2 Q. What is your address?  
3 A. I'm in Hattiesburg at 103 Dovercliff  
4 Road.  
5 Q. And you're an attorney; is that correct?  
6 A. That's correct.  
7 Q. Can you give me a little bit of  
8 information about your educational background?  
9 A. Graduated U S M in 1973 with a degree in  
10 political science. And then graduated from  
11 Mississippi College School of Law in 1978.  
12 Q. Okay?  
13 A. With a Juris Doctrate degree.  
14 Q. U S M being University of Southern  
15 Mississippi?  
16 A. Yes, ma'am.  
17 Q. And after you finished college, where did  
18 you work?  
19 A. Well, during my law school years, I  
20 worked here in Jackson at Legal Services Corporation  
21 from '73 to '80.  
22 Q. Okay. So after college you started  
23 working for Legal Services?  
24 A. During college and after college, I  
25 worked at Legal Services, Inc.

2 (Pages 2 to 5)

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1 Q. And you believe it's accurate?  
 2 A. Uh-huh. (Affirmatively), yes, ma'am.  
 3 Q. In paragraph 44 of the complaint, I think  
 4 it generally states that . . . was repeatedly  
 5 uprooted; is that correct?  
 6 A. Right.  
 7 Q. Do you have any idea what impact the  
 8 frequency of her placement as described in the  
 9 complaint has had on her?  
 10 A. I don't have any idea what impact it had  
 11 on her. I can guess that being moved five times in  
 12 five weeks wasn't healthy, but I can't look at her  
 13 psyche and figure out what she's thinking.  
 14 Q. Now are you aware of or have you seen any  
 15 medical or professional reports that have concluded  
 16 that she was negatively affected because of the  
 17 number of times that she was moved around?  
 18 A. I have not seen anything like that.  
 19 Q. Did you bring this issue of her being  
 20 moved around as the complaint described, did you  
 21 bring this as an issue to Judge MacPhail, as a  
 22 concern?  
 23 A. No, because it was moot in that by the  
 24 time we got to her case, she was settled in the  
 25 Raney home. These movements occurred between her

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1 being taken and the Judge having her case heard.  
 2 Q. So by the time that you had her review  
 3 before Judge MacPhail, you felt as her guardian ad  
 4 litem, that she was in a safe place?  
 5 A. Correct.  
 6 Q. And you did not bring up to the judge any  
 7 concerns that she might be moved again?  
 8 A. No, because that issue didn't come up.  
 9 Because the Raney's testified that they were willing  
 10 to take her as long as the court wanted them to.  
 11 Q. Now how many times did the Raney's have  
 12 Olivia . . . ?  
 13 A. It would be a guess. I know they've had  
 14 her consistently for a number of months. But during  
 15 these five moves, they may have had her for like an  
 16 overnight or something when they were trying to find  
 17 a placement. But I'm not certain, I can't remember.  
 18 Q. So by the time that you all had the  
 19 review, the last review, you were not concerned that  
 20 D H S was going to move her again?  
 21 A. Correct.  
 22 Q. And you didn't voice any complaint about  
 23 the frequency of her moves at the last hearing?  
 24 A. Yes. Not to the extent that we could do  
 25 anything about it because it was over, but we were

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1 seeking an explanation as to why.  
 2 Q. Okay?  
 3 A. So complaint only because we needed an  
 4 explanation. I mean, I couldn't complain --  
 5 Q. So you brought the issue up to Judge  
 6 MacPhail?  
 7 A. Correct.  
 8 Q. And what was his, what did he do in  
 9 response to you?  
 10 A. Had a five-day hearing.  
 11 Q. On . . . ?  
 12 A. On her case, trying to get the D H S  
 13 workers whose names I gave earlier, who played what  
 14 role in doing this that is described in --  
 15 Q. In the complaint?  
 16 A. Yeah, paragraphs 43 through 49.  
 17 Q. So Judge MacPhail had the authority to  
 18 look into these complaints that you -- let me finish  
 19 my question, these complaints that you were alleging  
 20 in regards to Olivia?  
 21 A. Well, yeah, he didn't. It wasn't sue  
 22 sponte. He had the prosecutor reopen the case and  
 23 she asked for a review, Ms. Castle.  
 24 Q. Ms. Castle?  
 25 A. She's the county prosecutor.

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1 Q. So there was a proceeding held before  
 2 Judge MacPhail on this case?  
 3 A. Yes, ma'am.  
 4 Q. And during that proceeding, you discussed  
 5 or there was a discussion or request for explanation  
 6 as to why . . . had been moved?  
 7 A. Correct.  
 8 Q. And there was a discussion regarding why,  
 9 about the assessments that she did or did not have;  
 10 is that correct?  
 11 A. Correct.  
 12 Q. And any conduct regarding Department of  
 13 Human Services that you had a complaint about or had  
 14 some concerns about was dealt with in this hearing;  
 15 is that correct?  
 16 A. Most of them, yeah. We didn't get  
 17 answers, but we tried to deal with them.  
 18 Q. This was a proceeding where you could  
 19 bring up those issues?  
 20 A. Correct.  
 21 Q. Okay. And did Judge MacPhail make any  
 22 kind of orders regarding the medical assessment?  
 23 Did he direct D H S to go out and get any sort of  
 24 particular type of medical or psychological  
 25 treatment for . . . ?

12 (Pages 42 to 45)

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1 A. Not that I'm aware of, but I don't know.  
 2 Q. Did he make any orders in regards to  
 3 placement, any further placement of Olivia?  
 4 A. Well, again, I don't believe the issue  
 5 came up since the Raney's were willing to keep her.  
 6 And it was everybody's agreement that she was in a  
 7 secure foster placement and she didn't need to be  
 8 moved, so it didn't really come up.  
 9 Q. What about termination of parental  
 10 rights, was that discussed?  
 11 A. Yes.  
 12 Q. What was the conclusion on that?  
 13 A. It was mixed. Some wanted to T P R the  
 14 mother and the father and others wanted to give them  
 15 a second chance. And I think officially, they're  
 16 still in the reunification mode.  
 17 Q. What was the judge's order in regards to  
 18 termination of parental rights or pursuing  
 19 termination of parental rights?  
 20 A. He didn't direct the county attorney  
 21 either way. He just directed the county attorney to  
 22 work with the Department. My understanding is that  
 23 they are looking at T P R.  
 24 Q. So you understand that?  
 25 A. It hasn't been filed that I'm aware of.

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1 Q. In preparation for this hearing that you  
 2 had, what was the, what prompted this proceeding  
 3 before Judge MacPhail regarding ?  
 4 A. Well, I don't know what prompted it.  
 5 Everybody kept coming back to a memo letter that was  
 6 faxed to the court from Hope Haven about her  
 7 physical condition and complications with her  
 8 physical condition. And that, I guess, kind of was  
 9 the red flag that everybody started looking at.  
 10 That's my understanding -- now, I don't know what  
 11 Ms. Castle, what triggered her or what triggered  
 12 Judge MacPhail or whatever, but that's what my, my  
 13 role as guardian ad litem triggered by interest in  
 14 it.  
 15 Q. Now as the guardian ad litem, when these  
 16 proceedings are initiated, do you go out and do an  
 17 independent investigation regarding Olivia or do you  
 18 just read the reports that are coming in from the  
 19 prosecutor or from D H S?  
 20 A. Most of the time, reading reports from D  
 21 H S and the prosecutor. In her case, I did have  
 22 some contact with Hope Haven people and Mr. Raney,  
 23 just to maybe corroborate, you know, what I was  
 24 hearing was in fact true and accurate.  
 Q. What was the final conclusion of this

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1 hearing? What orders did the judge make regarding  
 2 ?  
 3 A. Well, the hearing was really more to find  
 4 out how all of this happened. He basically just  
 5 left her in the Raney home and asked the Department  
 6 to, you know, monitor her situation.  
 7 Q. Did he issue any sort of punishment for  
 8 the Department of Human Services? Hold anybody in  
 9 contempt or something like that?  
 10 A. No, I can't remember. I mean, we really  
 11 didn't get to the bottom of it to be quite frank  
 12 with you.  
 13 Q. So as I understand, you just had this  
 14 proceeding before Judge MacPhail regarding  
 15 that brought up these issues that you're talking  
 16 about in the complaint. And at the end of the day,  
 17 there was no conclusion as to whether D H S had done  
 18 anything wrong in regards to ?  
 19 A. I think there was conclusion in the  
 20 court's mind that it was not handled correctly. But  
 21 the court could not find anybody within the  
 22 Department that would give the court the information  
 23 regarding how this happened. Everybody was saying,  
 24 "I don't know or ask so and so or check with so and  
 25 so."

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1 Q. So nobody at the Department of Human  
 2 Services, the judge didn't hold anybody at the  
 3 Department of Human Services liable for anything?  
 4 A. Correct. He had a lot to say in his  
 5 closing remarks, but as far as an adjudication  
 6 disposition of anything, no.  
 7 Q. As your statutory, as a guardian ad  
 8 litem, some of your statutory duties would include  
 9 you can make recommendation to the judge; is that  
 10 correct?  
 11 A. Correct.  
 12 Q. And you can do reports, enter reports?  
 13 A. Correct.  
 14 Q. And you can institute the type of  
 15 proceedings that you were just describing; is that  
 16 correct, on behalf of minor children?  
 17 A. Correct, uh-huh. (Affirmatively).  
 18 Q. Have you made a determination of whether  
 19 parents' rights should be terminated?  
 20 A. Legally, no. She'll make two steps  
 21 forward and then she'll drop back, the mother. The  
 22 father is pretty much, he hasn't signed away his  
 23 parental rights but he's not fighting for them. The  
 24 mother is. But Judge MacPhail and also D H S really  
 25 give the parents a lot of time to try to get their

13 (Pages 46 to 49)